

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOSE ZAVALA, #12838-078 §
VS. § CIVIL ACTION NO. 6:14cv550
UNITED STATES OF AMERICA § CRIM. NO. 6:06CR00027-003

ORDER OF DISMISSAL

Movant Jose Zavala, a prisoner confined at U.S.P. Hazelton, filed the above-styled and numbered successive motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the motion should be dismissed as time-barred. Zavala has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Zavala to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections by Zavala are without merit. It is noted that Zavala is seeking relief based on *Alleyne v. United States*, 570 U.S. ___, 133 S. Ct. 2151 (2013). *Alleyne*, however, does not provide a basis for relief in this proceeding. *In re Kemper*, 735 F.3d 211, 212 (5th Cir. 2013) (The “Supreme Court did not declare that *Alleyne* applies retroactively on collateral review.”). *See also Fox v. United States*, No. 6:13cv622, 2014 WL 2199995 (E.D. Tex. May 27, 2014). Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Government’s motion to dismiss (docket entry #6) is **GRANTED**.

It is further

ORDERED that Zavala's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. It is further **ORDERED** that a certificate of appealability is **DENIED**. It is finally **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 6th day of January, 2015.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE